PERTINENT RULES OF THE COURT OF APPEALS OF KENTUCKY IN DISCIPLINARY CASES

RCA 3.140 **Initiation of Disciplinary Cases.**

When it comes to the attention of the Board or any officer that an attorney may have been guilty of unprofessional conduct, or has been complained against for such conduct, the matter shall be reported to the President who shall cause such investigation to be made, as may be necessary and he shall cause notice of the pendency of the complaint to be given to the attorney involved who shall have fifteen days within which to respond thereto.

RCA 3.150 **Investigation and Trials to be Prompt.**

All investigations and the trial of all disciplinary cases shall be begun, prosecuted and completed as promptly as the ends of justice will permit. Neither the unwillingness of the complainant to prosecute, nor an offer of settlement, compromise or restitution shall delay the investigation, trial or report to the Board.

RCA 3.160 **Unfounded Complaints.**

If the President deems any accusation, letter or complaint against an attorney unfounded, he may withhold action thereon until the next meeting of the Board at which time he shall submit the matter to the Board. Except in cases where a fee or deposit for costs has been paid in advance to an attorney by a client, a complaint which is based solely upon an attorney's failure to answer letters, or to do so punctually, or to prosecute the business of the attorney's client with such speed or diligence as the latter expects or desires, shall be deemed unfounded and the President, without referring the matter to the Board may decline to entertain it and direct the Director to return the complaint to the person from whom received with a letter of explana-

tion. When a complaint which the President deems to be unfounded is by him referred to the Board, the Board may, without investigation, decline to entertain the complaint and direct the Director to return the same to the person from whom received with a letter of explanation.

RCA 3.170 **Proceedings not Public; Exception.**

Nothing connected with a disciplinary case shall be made public unless ordered by the Court.

RCA 3.180 **Charges; Form; by Whom and Where Filed.**

If the Board determines, by a majority vote, that a complaint should be tried, a charge shall be prepared stating the name and present or last known address of the attorney and facts alleged to constitute unprofessional conduct. The charge shall be signed by the President or such officer of the Association as the Board may authorize and filed in the office of the Director.

RCA 3.190 **Appointment of Trial Committee; its Powers and Qualifications.**

If the pleading presents any issue of fact, the President shall appoint a Trial Committee composed of three members of the House of Delegates one of whom shall be named Chairman, and none of whom resides or has his office in the same judicial district as the respondent. The chairman shall possess the qualifications and powers of a circuit judge under a commission from the Chief Justice. The Director shall immediately notify each member of the Trial Committee of his appointment, and shall furnish each with a copy of the pleadings.

RCA 3.200 **Notice of Appointment of Trial Committee and Hearing.**

Upon the appointment of a Trial Committee the Director shall notify the parties of the names and addresses of its members. The Chairman of the Trial Committee shall fix

the time and place of the hearing and the Director shall give notice thereof to the parties. Such hearing shall be not less than twenty days after the date of the notice.

RCA 3.210 **Challenge to Qualifications of Trial Committee.**

Any time, not later than ten days before the date set for hearing the respondent may, by motion, challenge for cause any member of the Trial Committee. If the challenge is such as might disqualify a circuit judge the President shall relieve the challenged member and immediately fill the vacancy.

RCA 3.230 **Notice of Filing Charges; Time to Answer.**

Upon the filing of a charge the Director, by certified mail return receipt requested, shall furnish the respondent with a copy of the charge and notify him:

(a) Of the name and address of the attorney for the Association.

(b) That he must within twenty days after receipt of the notice file his answer and three copies with the Director and serve a copy of the answer on the attorney for the Association.

RCA 3.250 **Pleadings and Preliminary Motions.**

There shall be a charge and answer and, when permitted by the Trial Committee, a reply and such amendments to pleadings as may be required to serve the ends of justice. Averments in an answer or a response shall be taken as denied or avoided. No preliminary motions may be filed except:

(a) For a more definite statement of the charge or answer.

(b) Challenging the qualifications of the Trial Committee as provided by RCA 3.210.

RCA 3.260 Filing and Processing of Pleadings and Other Papers.

After a charge is filed and before any proceedings are instituted in the Court, an original and three copies of all further pleadings, notices, motions, orders and briefs shall be sent to the Director who shall file the original and forward one copy to each member of the Trial Committee. All other reports, inquiries, letters, letters of transmittal and other communications shall be sent to, and processed by, the Director. No such paper or copy thereof shall be sent by, or on behalf of any party to the Court, the Board, the Trial Committee or any member thereof.

RCA 3.270 Service of Pleadings and Other Papers.

A copy of any pleading after the charge and of any notice, motion, order and brief shall be served by counsel upon each other counsel of record in the proceeding.

RCA 3.280 Rights of Respondent Against Whom a Charge has Been Filed.

The respondent against whom a charge has been filed shall have the right to be represented by counsel and entitled to a hearing before a Trial Committee. He shall have all the rights secured to a party by the Rules of Civil Procedure with respect to the introduction of evidence, the right to compel the attendance of witnesses; and the production of books, papers and documents or other writings except those contained in the investigative file of the Board. He shall have the right to an oral argument or to file a brief before the Trial Committee. He shall be afforded a full opportunity to remain silent, to defend himself by the introduction of evidence and to cross-examine witnesses called against him. If the respondent be unable to employ counsel, the President, upon written request in affidavit form, made within twenty days after service of the Charges, shall appoint counsel for the respondent.

RCA 3.340 **Procedure When Pleadings Present Only an Issue of Law.**

If the pleadings only present issues of law the Board shall fix a time for the filing of briefs. Thereafter, the Board shall consider the briefs and report its recommendation to the Court.

RCA 3.350 **Order of Proceedings and Burden of Proof.**

The Trial Committee shall determine and regulate the order of proceedings at the hearing. Upon the application of a party or upon direction of the Trial Committee the Director shall issue subpoenas for the attendance of witnesses or the production of evidence. The burden of proof shall rest upon the Association in a disciplinary proceeding and the facts must be proven by a preponderance of the evidence. In reinstatement hearings the burden shall rest upon the applicant. Before submission the Trial Committee may direct such oral arguments as it deems appropriate and receive briefs from all parties on such terms as it may impose. After submission of the case to the Trial Committee there shall be no further oral argument or briefing either before the Trial Committee or before the Board.

RCA 3.360 **Introduction and Admissibility of Evidence, Evidence Taken in Other Proceedings.**

The testimony at all hearings shall be in person, except that the parties may use depositions under the same standards as those prescribed by the Kentucky Rules of Civil Procedure. The Rules of evidence applicable in civil actions shall apply.

Where, in any proceeding, evidence has been taken under oath upon due notice to the Respondent, and at the taking of which Respondent has appeared, either in person or by counsel, or as attorney for any party, a duly certified transcript of all, or the essential portions, of such proceed-

ings may be used as evidence in any hearing provided for in RCA 3.200, or in any investigation antecedent to or in connection with any disciplinary case involving the same charge or any charge growing out of matters connected therewith, and such transcript and record, or parts thereof, may be made a part of the record on any hearing or investigation.

RCA 3.370 **Transcript of Evidence.**

The proceedings before the Trial Committee shall be reported by a reporter appointed by the Trial Committee. However, after hearing, if the Trial Committee is of the unanimous opinion that the respondent should only be administered a private reprimand or that all charges should be dismissed the Trial Committee may, with the consent of the parties, direct the reporter to preserve all notes of the hearing but defer a transcription of the record until ordered by the Board to prepare such transcript. In all other proceedings the testimony shall be transcribed.

RCA 3.380 **Trial Committee to File Report With Board.**

When a disciplinary proceeding has been finally submitted, the Trial Committee shall promptly file with the Board the entire transcript of the proceeding, the transcript of testimony together with such briefs as may have been filed and a written report in the nature of a findings of fact and conclusions of law, which shall contain a concise statement of:

(a) the charges made against and the defense offered by the respondent;

(b) the proceedings had;

(c) the facts which the Committee deems proven by a preponderance of the evidence, the Committee's conclusions; and

(d) its recommendations as to the disposition of the case.

The Trial Committee's report shall constitute a part of the record in the case and a copy of such report shall be served upon counsel for the parties. The report shall be advisory.

RCA 3.390 **Board's Action on Trial Committee's Report.**

Upon receipt of the report of the Trial Committee the Board, except the Chairman and Chairman-elect who shall have no vote in any disciplinary proceedings, shall promptly consider and act upon the entire record. The Board shall decide, by a roll call vote, whether the respondent is guilty or not guilty. If the respondent is found not guilty, the Board's action is final. If the respondent be found guilty, the Board shall then decide, by a second roll call vote, the disciplinary action to be recommended. Both the finding of guilty and the disciplinary action to be recommended must be agreed upon by a majority of the members of the Board entitled to vote in disciplinary proceedings. The result of each of the two votes shall be recorded in the Board's minutes. The president shall sign and file with the Director an order setting forth the Board's action and the Director shall mail copies of such order to the parties and to each member of the Trial Committee. If discipline is ordered by the Board or recommended to the Court a copy of the order shall be filed with the Clerk. Any order recommending to the Court that disciplinary action be taken shall be advisory. Promptly after the filing of the order of the Board the Director shall file with the Clerk the entire record commencing with the charge and a certified bill for the costs and expenses incurred by the Board and the Trial Committee in the investigation preliminary to and in the conduct of the proceedings.

RCA 3.400 **Degrees of Discipline.**

Upon a finding by the Board of guilt of unprofessional conduct, discipline may be administered by way of private reprimand issued by the Board without further proceedings or right of appeal to the Court; or, by the Court, upon

recommendation by the Board, by way of public reprimand, censure, suspension from practice or disbarment. If a private reprimand is issued, it shall not be made public and shall be transmitted only to the respondent, or to his attorney, and to the attorney for the complainant.

RCA 3.420 **Procedure in the Court.**

Promptly upon the filing of the order as provided in RCA 3.390, the Clerk shall advance the case on the docket and shall forthwith issue a rule against the respondent returnable within twenty days after service of the rule requiring the respondent to show cause why he should not be adjudged guilty of unprofessional conduct and disciplined therefor. When the respondent is proceeded against by warning order, the rule shall be deemed to have been served thirty days after the date of the making of the warning order. If response is not filed when due the Court shall enter judgment against the respondent, adjudging him guilty of unprofessional conduct and disciplining him. When a response is filed, the respondent shall furnish a bond with surety acceptable to the Clerk, conditioned that if the principal in the bond be disciplined by the Court, he will promptly pay all costs incurred in the proceeding, including those certified under RCA 3.390. If he files his response in forma pauperis no bond shall be required.

RCA 3.450 **Disposition of Case.**

Upon submission of the case the Court will enter such orders as it may deem proper. The provisions of the Rules regarding petition for rehearing and issuance of a mandate shall apply. The Clerk shall promptly furnish a copy of the order of disposition to all parties and the Director. Every such order except those for private reprimand, shall be published as are other opinions of the Court and an attested copy shall be forwarded by the Clerk to the circuit clerk who shall record the attested copy in the Commonwealth Order Book and index the same.